

UNITED STATES DISTRICT COURT

District of New Jersey

Chambers of
William H. Walls
District Judge

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Martin Luther King Jr.
Federal Courthouse
50 Walnut Street
Newark, New Jersey 07102

October 11, 2012

Michael S. Kimm, Esq.
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333 Sylvan Avenue, Suite 106
Englewood Cliffs, NJ 07632

Re: Kim v. Dongbu Tour & Travel, Inc., 2:12-CV-1136-WHW-MCA

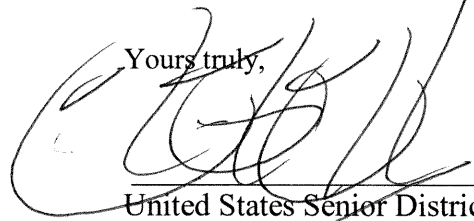
Dear Counsel:

The Court has received Defendants' October 9, 2012 letter, and writes to confirm its determination that proceedings have not been stayed before this Court pending the appeal of its July 25, 2012 Order denying arbitration. Under Third Circuit case law, and specifically Ehleiter v. Grapetree Shores, Inc., 482 F.3d 207 (3d Cir. 2007), a trial court is only automatically divested of jurisdiction if the appeal is determined to be frivolous or forfeited. 482 F.3d at 215 n.6.

That the parties have failed to produce any contract between Defendants and Plaintiffs, let alone a contract containing an arbitration provision, causes this Court to deem your appeal frivolous. It is obvious that a right to arbitration cannot arise absent a contractual base.

Additionally, this Court further observes that no appeal stay would have been triggered on August 13 because Defendants' Notice of Appeal did not become effective until this Court decided the then-pending Motion for Reconsideration. Federal Rules of Appellate Procedure, Rule 4(a)(4). This Court did not issue its decision on that Motion until September 19, 2012, long after the deadline for Defendants' opposition papers to Plaintiffs' motion to dismiss had passed.

Yours truly,



United States Senior District Judge

cc: All Counsel of Record (via ECF)